JOHORE GRANITE QUARRIES SDN. BHD.

v.

STRAITS ENGINEERS (S) PTE. LTD.

HIGH COURT MALAYA, JOHOR BAHRU
MOHD. YUSOF ABDUL RASHID J
[CIVIL SUIT NO. 234 OF 1974]
18 JANUARY 1982

CONTRACT: *Supply of granite rocks - Refusal to pay balance as supply not according to specifications - Meaning of "clean, sound and unweathered" - Whether rocks supplied according to specification - Whether liable to pay in full or only in respect of clean rocks - Sections 15, 37(3) Sale of Goods (Malay States) Ordinance 1957.*

The plaintiffs supplied granite rocks to the defendants. As the rocks were not according to the agreed specifications, the defendants discounted the weight of the "quarry waste" and paid for the "clean" rocks only. The plaintiffs disagreed and filed this suit, claiming for the balance due.

Held:

[1] The rocks supplied were accompanied with "quarry waste" and not according to the agreed specifications i.e. "clean, sound and unweathered".

[2] The defendants were therefore entitled to deduct the weight of "quarry waste" from the rocks to accord them to the agreed specifications.

[3] The defendants are only liable in a sum of RM94,444.68 being the price for the "clean, sound and unweathered" granite rocks duly delivered by the plaintiffs. Since the amount due had been duly settled, the plaintiffs have no claim against the defendants.

[Plaintiffs' claim dismissed with costs.]

Cases referred to:
Moore v. Lauduer & Co. [1921] 1 KB 73

Legislation referred to:
Sale of Goods (Malay States) Ordinance 1957, ss. 15, 37(1), (3)

For the plaintiffs - Rosita Yeo together with Tam Chien Kong
For the defendants - F.C. Cheah

JUDGMENT

Mohd. Yusof Abdul Rashid J:

The plaintiffs are claiming for the recovery of a sum of RM144,518.86 for goods sold and delivered to the defendants but since the defendants before the date of hearing had settled the sum of RM84,444.68 on 3 December 1974, the final claim is for the recovery of a sum of RM30,074.18.

The brief facts are as follows:

The defendants in 1973 were awarded a contract to widen the Johore Causeway on the Johore Bahru side and required granite rocks for the purpose. The plaintiffs who were then one of the biggest suppliers of granite rocks in Johore agreed to supply the same to the defendants on the agreed terms that:

The rocks shall be clean, sound and unweathered;

Two sizes shall be supplied:

9" x 4" at RM7 per ton and

9" x 48 1/3" at RM6 per ton;

200 tons shall be supplied per day;

The rocks shall be delivered to the Loading Bay to Tampoi; and

Payment shall be made within 30 days of delivery of rocks.

The parties agreed that the granite rocks were delivered to the defendants and if the rocks delivered were "clean, sound and unweathered" the total amount due to the plaintiffs was RM124,518.86. It was also agreed that the defendants had paid a total sum of RM94,444.68 and if the plaintiffs succeed in their claim the balance is RM30,074.18. The defendants refused to pay the said balance on the ground that the rock supplied by the plaintiffs were not "clean, sound and unweathered" and that for the rocks which were supplied according to the specifications the defendants were only liable in a sum of RM94,444.68. The plaintiffs, on the other hand, denied that the defendants were entitled to reduce the cost as the rocks were supplied according to specifications agreed upon.

There are 3 principal issues which involve questions of law and fact to be determined. Firstly, the Court has to determine the meaning to be attributed to the words "clean, sound and unweathered"; secondly, as a question of fact, did the plaintiffs supply "clean, sound and unweathered" rocks to the defendants; and thirdly, if the answer is in the negative to the second question, whether or not, since the rocks were sold in tonnage, the defendants were entitled to determine the actual weight of "clean, sound and unweathered" rocks which were delivered by discounting the weight of "quarry waste" that accompanied the rocks.

"Clean, sound and unweathered"

It is the contention of the defendants that the said specifications are common trade terms to be understood as -

"Clean" means free of all foreign matter;

"Sound" means unfissured or uncracked;

"Unweathered" means unexposed to elements for any space of time.

Since there is no allegation by the defendants that the rocks delivered were otherwise than "sound and unweathered" I need only determine whether the rocks were "clean". On this I must refer to the evidence of the principal witness for the plaintiffs, Koh Lian Chuan, the plaintiffs quarry manager. On being cross-examined regarding the intent of the word "clean", he said that "clean" means that the rocks are not accompanied by any earth. He, however, contended that the rocks which were delivered to the defendants were "clean".

On the interpretation of the word "clean" I am satisfied that the rocks to be supplied by the plaintiffs shall be free from any "quarry waste" such as sand, earth, dust and gravel.

Whether the rocks delivered were "clean"

Next I have to determine whether or not the rocks delivered by the plaintiffs were accompanied by any "quarry waste". To establish this fact the defendants called upon several witnesses. I need only rely on the evidence of one, Sreedharan s/o Gopal Nair, an employee of the JKR who was at the unloading bay of the defendants at Tampoi. This witness testified that the

rocks supplied by the plaintiffs were accompanied by "quarry waste" and that the defendants separated the "quarry waste" from the said rocks in order to determine the actual weight of "clean" rocks delivered. The evidence of this witness was corroborated by other witnesses called by the defendants. Hence I have no doubt at all that the rocks supplied by the plaintiffs were accompanied by "quarry waste". Since the plaintiffs had undertaken to deliver "clean" rocks, the plaintiffs had breached the specifications agreed upon by the parties.

It appears to be clear that the stipulation in the contract that the rocks to be delivered shall be "clean, sound and unweathered" is part of the description of the goods. There is, therefore, an implied condition that the goods when tendered shall correspond with the description. See s. 15 of the Sale of Goods (Malay States) Ordinance, 1957 which provides:

> Where there is a contract for the sale of goods by description there is an implied condition that the goods shall correspond with the description; ...

The defendants being the buyers of the rocks supplied by the sellers, i.e. the plaintiffs, are liable to pay only in respect of "clean" rocks the delivery of which the defendants had accepted. This is in conformity with the provisions of s. 37(1) of the above cited Ordinance provisions of which are as follows:

> Where the seller delivers to the buyers a quality of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts the goods so delivered he shall pay for them at the contract rate.

In the instant case, the plaintiffs had weighed the rocks along with the "quarry waste" which had accompanied them and had specified in the delivery orders the weight of the rocks including weight of the "quarry waste". which had accompanied the rocks and had paid for the "clean" rocks the delivery of which the defendants had accepted.

Where the defendants were entitled to deduct the weight "quarry waste" accompanying the rocks.

Mr. A.D Thomas, the general manager of the defendants testified that thought the rocks supplied by the plaintiffs were not according to the specifications in that the "clean" rocks were accompanied by "quarry waste", the defendants did not reject them since those rocks complied with the specifications after the "quarry waste" had been separated from them. I have no reason to disagree with the contention and accept the fact that the rocks were supplied in accordance with the specifications after the "quarry waste" had been separated from them. In the result, I am of the view that the defendants were entitled to deduct the weight of the "quarry waste" from the rocks to accord them to the agreed specifications.

Under s. 37(3) of the 1957 Ordinance it is provided that:

> Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest, or may reject the whole.

Rowlatt J in *Moore v. Lauduer & Co.* [1921] 1 KB 73 at 76 expressed the view that the words "mixed with" cannot refer to physical confusion but are equivalent to "accompanied by". On appeal this view was approved by the Court of Appeal. To my mind it is wrong for the plaintiffs to compel the defendants to accept the delivery of the rocks according to the weight determined by the weight determined by the plaintiffs were insisting, in my view erroneously, that the defendants shall accept the weight of the "clean" rocks together with the weight of the "quarry waste" which accompanied the "clean" rocks. It is also contrary to s. 37(3) of the 1957 Ordinance for the plaintiffs to insist that under the circumstances the

defendants had no choice but to reject the rocks supplied by the plaintiffs and that the defendants had no discretion to accept then rocks after separating the "quarry waste". It is a notorious fact that "quarry waste" is also a valuable commodity which is merchantable. It is known that "quarry waste" is saleable at a price of not less RM20-RM30 per lorry load. Such "quarry waste" may be used for the purpose of reclamation works and filling and levelling works. However, the defendants did not contract to purchase such "quarry waste" and under the said s. 37(3) should such "quarry waste" accompany the "clean" rocks the defendants are entitled in law to a discretion either to accept the "clean" rocks and to reject the "quarry waste" or to reject totally the rocks and the "quarry waste" supplied, though the plaintiffs are not entitled to insist on this.

The determination of weight of the "quarry waste"

Witnesses for the defendants described in detail the method adopted to determine the weight of the "quarry waste" which were found accompanying the rocks supplied by the plaintiffs. As soon as a lorry carrying rocks from the plaintiffs' quarry arrived at the unloading bay at Tampoi the lorry, together with the rocks, was weighted. When the rocks were separated from the "quarry waste". The weight of the "quarry waste" was then determined. The lorry driver concerned, the representatives of the defendants and the representative of the JKR would estimate the weight of the "quarry waste". If all were satisfied with the figure estimated, the weight of the "quarry waste" and the weight of the empty lorry were deducted from the weight first recorded when the loaded lorry was weighted on arrival. The following weights were recorded on the back of the delivery orders:

> Weight of the loaded lorry less than weight of the 'quarry waste';
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> Weight of the unloaded lorry; and
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> Weight of the rocks less the weight of the 'quarry waste' and the weight of the unloaded lorry.

The defendants based their calculation for the purpose of paying the defendants on the weight of the rocks less than weight of the "quarry waste" and the weight of the unloaded lorry.

In my judgment, the method adopted by the defendants in arriving at the weight of the "quarry waste" is satisfactory and the amount arrived at by the defendants is reasonable. Since a copy of the delivery order was returned to the plaintiffs at the back of which were recorded the above mentioned particulars, the plaintiffs were fully aware of the deductions made in respect of the "quarry waste" found present in the rocks delivered by the plaintiffs.

In my judgment the defendants were entitled in law to accept the delivery of the rocks after separating the "quarry waste" accompanying the rocks and they are only liable in a sum of RM94,444.68 being the price for the "clean, sound and unweathered" granite rocks duly delivered" granite rocks duly delivered to them by the plaintiffs. Since the amount due had been duly settled, the plaintiffs have no claim against the defendants. The claim by the plaintiffs is dismissed with costs.

Also found at [1982] CLJ 155